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12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE COUNTY OF MARIN

15 CHURCH OF SCIENTOLOGY  
16 INTERNATIONAL, a California not-  
for-profit religious corporation,  
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Plaintiff,

vs.

GERALD ARMSTRONG; DOES 1 through  
25, inclusive,

Defendants.

) CASE NO. 157680  
) [LASC NO. BC-052395]  
) [CONSOLIDATED]  
) SEPARATE STATEMENT OF  
) QUESTIONS TO BE COMPELLED  
) IN SUPPORT OF PLAINTIFF  
) CHURCH OF SCIENTOLOGY  
) INTERNATIONAL'S MOTION TO  
) COMPEL DEFENDANT GERALD  
) ARMSTRONG TO ANSWER  
) DEPOSITION QUESTIONS, AND  
) FOR SANCTIONS  
)  
) DATE: January 27, 1995  
) TIME: 2:00 p.m.  
) CALENDAR: Law and Motion  
) HEARING JUDGE: Discovery  
) Referee  
) TRIAL DATE: May 18, 1995

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1 THE QUESTIONS AT ISSUE

2 On August 18, August 19, and October 20, 1994, plaintiff,  
3 who was represented by Michael Lee Hertzberg, and Laurie J.  
4 Bartilson of Bowles & Moxon, took the deposition of Gerald  
5 Armstrong. Mr. Armstrong refused to answer many questions, and  
6 also refused to produce any documents. The following questions  
7 or requests were posed to Mr. Armstrong with his refusal to  
8 testify and/or produce documents:

9 A. DEPOSITION QUESTIONS CONCERNING ARMSTRONG'S CONVERSATIONS  
10 WITH OTHERS ABOUT HIS EXPERIENCES IN AND WITH SCIENTOLOGY  
QUESTION NO. 1:

11 Q: After you had received information that the tax  
12 exemption had been granted [to the churches of Scientology], you  
13 called a variety of people to discuss the matter, did you not?

14 A: I remember I called -- well, a number of people called  
15 me, but I remember sort of being moved to talk to a number of  
16 people.

17 Q: About that subject?

18 A: Yeah. I mean, it was fairly big news for a period of  
19 time.

20 Q: And who were those people?

21 A: Oh, boy.

22 MR. GREENE: At this point I'm going to object based on  
23 relevancy grounds, based on associational privacy grounds, and  
24 instruct the witness not to answer.

25 [GA Depo. Vol. VI, 724:23-725:13]

26 QUESTION NO. 2:

27 Q: Between March of 1993 and the present, have you spoken  
28 to any other individuals other than media representatives that

1 you have already testified about regarding your experiences as a  
2 Scientologist?

3 A: Broadly, yes.

4 Q: And with whom did you have such conversations?

5 A: I think with regard to all of those sorts of  
6 conversations, I think that because of my right to privacy and  
7 their right to privacy, that I would decline to get into any of  
8 those sort of contacts.

9 Q: Well, I'm requesting that you answer the question. It  
10 is as germane as any question could conceivably be to the causes  
11 of action that are pending in this lawsuit. And I would like you  
12 to answer the question, please.

13 A: I don't think that it's relevant to your lawsuit at  
14 all. Your lawsuit does not contain those sorts of allegations.  
15 And I don't think that my discussing my experiences of now 25  
16 years of existence with anybody in the world other than those  
17 borderline matters which I've answered about, that is, litigation  
18 specific or media specific, I think that I do have a right of  
19 privacy. And I think that the freedom of and right of people to  
20 communicate freely with me is more important than whatever you  
21 could get or use in this regard. So I really don't think that  
22 it's proper and I decline to answer.

23 [GA Depo. Vol VI, 737:18-738:23]

24 QUESTION NO. 3:

25 Q: Other than the submission to ETV, to the copyright  
26 office and to the Writer's Guild, to whom did you furnish a copy  
27 of your manuscript titled "One Hell of a Story" between March,  
28 1993 and the present?

1 MR. GREENE: I object based on privacy and based on first  
2 amendment associational rights.

3 MR. HERTZBERG: All right, are you instructing him not to  
4 answer?

5 MR. GREENE: I have not instructed him not to answer.

6 MR. HERTZBERG: All right, would you answer the question,  
7 please, Mr. Armstrong?

8 A: Okay, then, I think that -- that for privacy reasons  
9 and the safety of everyone involved that I would not answer.

10 [GA Depo. Vol. VII, 876:18-877:8]

11 REASONS FOR COMPELLING RESPONSES TO CATEGORY A

12 According to the Code of Civil Procedure, "information is  
13 discoverable if it is unprivileged and is either relevant to the  
14 subject matter of the action or reasonably calculated to reveal  
15 admissible evidence." Valley Bank of Nevada v. Superior Court  
16 (1975) 15 Cal.3d 652, 655-656, 125 Cal.Rptr. 553, 554. Moreover,  
17 "the relevance of the subject matter standard must be reasonably  
18 applied; in accordance with the liberal policies underlying the  
19 discovery procedures, doubts as to relevance should generally be  
20 resolved in favor of permitting discovery." Id. at 656, quoting  
21 Pacific Tel. & Tel. Co. v. Superior Court (1970) 2 Cal.3d 161,  
22 173, 84 Cal.Rptr. 718, 726.

23 In 1986, Armstrong agreed, inter alia, that he would not  
24 discuss his experiences in Scientology with anyone, that he would  
25 not aid others in litigation against the Church and related  
26 entities, and that he would not work to create any publication,  
27 in any medium, about Scientology. The complaint alleges that he  
28 has done each of these things [E.g., ¶¶ 42-48, 90-98]. For the

1 Church to ask Armstrong to whom he spoke about Scientology, what  
2 was said, and to whom he gave a screenplay, seeks directly  
3 relevant evidence of breaches of the Agreement, and is also  
4 likely to lead to the discovery of further breaches or more  
5 evidence, in the form of testimony from the beneficiaries of his  
6 breaches. Indeed, it is difficult to conceive of discovery which  
7 could be more directly relevant to plaintiff's claims.

8 Nor can Armstrong raise the barrier of "privacy" claims as a  
9 shield against this necessary and lawful discovery. "'Not every  
10 act which has some impact on personal privacy invokes the  
11 protections of [our Constitution]. . . . [A] court should not play  
12 the trump card of unconstitutionality to protect absolutely every  
13 assertion of individual privacy.'" Hill v. National Collegiate  
14 Athletic Association (1994), 7 Cal.4th 1, 37, 26 Cal.Rptr.2d 834,  
15 857, quoting Wilkinson v. Times Mirror Corp. (1989) 215  
16 Cal.App.3d 1034, 1046, 264 Cal.Rptr. 194. It is well-established  
17 that "courts must balance the right of civil litigants to  
18 discover relevant facts against the privacy interests of persons  
19 subject to discovery." Vinson v. Superior Court (1987) 43 Cal.3d  
20 833, 842, 239 Cal.Rptr. 292, 299. Indeed,

21 In order to facilitate the ascertainment of truth  
22 and the just resolution of legal claims, the state  
23 clearly exerts a justifiable interest in requiring a  
24 businessman to disclose communications, confidential or  
25 otherwise, relevant to pending litigation.

25 Valley Bank, supra, 15 Cal.3d at 658-659, quoting In Re Lifschutz  
26 (1970) 2 Cal.3d 415, 425, 85 Cal.Rptr. 829, 835.

27 In Hill, supra, the California Supreme Court recently  
28 considered whether a drug test administered by the NCAA violated

1 the privacy of student athletes. The court held that the athletes  
2 had no claim for invasion of privacy from the tests as a matter  
3 of law, not because the tests did not intrude on privacy  
4 interests, but because the athletes had a diminished expectation  
5 of privacy due to their participation in the sports programs of  
6 their colleges. This diminished expectation, coupled with the  
7 valid interest of the NCAA in ensuring that college athletic  
8 programs were drug-free. The court directed judgment in favor of  
9 NCAA.

10 So, here, this Court should balance Armstrong's privacy  
11 interests with those of the Church. Armstrong claims he has a  
12 right to privately communicate about his experiences in  
13 Scientology with others, and to refuse to disclose those  
14 communications in discovery. However, in 1986 Armstrong agreed  
15 that he would not have any such conversations in the future, and  
16 that he would pay the Church \$50,000 should he violate that  
17 agreement. By signing the Agreement and accepting the  
18 settlement, he waived any claim to privacy as to conversations  
19 which he may have had with people about Scientology.

20 Moreover, each of the conversations which the Church  
21 inquired about occurred after this lawsuit was filed. The action  
22 includes a request for permanent injunction, and allegations that  
23 Armstrong's conduct is repetitive and continuing. Armstrong and  
24 any persons conversing with Armstrong were thus on notice that  
25 any conversations about Scientology could and would become the  
26 legitimate subject of discovery herein.

27 B. DEPOSITION QUESTIONS CONCERNING ARMSTRONG'S EMPLOYMENT BY  
28 MR. GREENE

1           QUESTION NO. 4:

2           Q:    Was this the first matter that you worked on in Mr.  
3           Greene's office when you commenced your employment with Mr.  
4           Greene?

5           A:    I believe so, yes.

6           Q:    Do you remember whether this -- were you working on a -  
7           - was Mr. Greene preparing a motion or opposition to a motion, do  
8           you have any recollection of that?

9           A:    Of the two choices, then I would say it was certainly  
10          an opposition.

11          Q:    You're certain of that?

12          A:    I believe.

13          Q:    I don't want you to speculate.

14          A:    I don't know what the -- I do not know what the  
15          document, the initial document was, but it's my belief that it  
16          was related to oppositions.

17          Q:    Oppositions by the Aznarans?

18          A:    Correct.

19          Q:    Did you prepare any exhibits for those papers that Mr.  
20          Greene was working on?

21          MR. GREENE:    Objection, it's vague and ambiguous as to  
22          prepare exhibits.  If what you mean is did he assemble exhibits,  
23          that's one thing, but whether or not --

24          MR. HERTZBERG:  Let's start with that.  I think we can cover  
25          it.

26          MR. GREENE:    Good.  You know, it's vague the way you  
27          phrased it.

28          MR. HERTZBERG:  Did you assemble any exhibits?

1 A: Yes, my recollection.

2 Q: That's all I'm asking for is your recollection.

3 A: Okay.

4 Q: Did you discuss with Mr. Greene what exhibits should go  
5 into the papers he was preparing?

6 MR. GREENE: I'm going to object at this point based on work  
7 product privilege and instruct the witness not to answer.

8 [GA Depo. Vol VI, 639:1-640:16.]

9 QUESTION NO. 5:

10 Q: All right. And have you continued to receive checks  
11 from time to time from Mr. Greene for your employment in his  
12 office?

13 A: Yes.

14 Q: And that continues to the present?

15 A: Yes.

16 \* \* \*

17 Q: And is that pursuant to an agreement you have with Mr.  
18 Greene?

19 A: Broadly, yes.

20 Q: Yes. And what is that agreement?

21 A: What is the agreement?

22 Q: Yes.

23 MR. GREENE: I'm going to object based on privacy,  
24 instruct the witness not to answer.

25 [GA Depo. Vol. VI, 643:19-644:21]

26 QUESTION NO. 6:

27 Q: Is there an agreed upon rate of compensation that you  
28 have with Mr. Greene for your employment in his office?



1 A: Broadly that there has been, yes.

2 Q: And what is that?

3 MR. GREENE: Same objection, same instruction.

4 [GA Depo. Vol. VI, 644:22-645:3]

5 REASONS FOR COMPELLING RESPONSES TO CATEGORY B

6 A central allegation in the Church's complaint is  
7 Armstrong's assistance via Ford Greene to anti-Church litigants  
8 Richard and Vicki Aznaran. Before the instant litigation was  
9 started, Armstrong obtained employment in the offices of the  
10 Aznarans' attorney, Ford Greene, and provided him with assistance  
11 in the case of Vicki Aznaran and Richard Aznaran v. Church of  
12 Scientology International, et al., U.S. District Court, Central  
13 District of California No. CV-88-1786-JMI(Ex). [Second Amended  
14 Complaint, ¶¶ 35-38]. Armstrong was enjoined from continuing to  
15 provide this assistance by the Court's May, 1992 order.  
16 Armstrong's provision of aid to the Aznarans is thus a central  
17 factual question raised by the complaint, and prohibited both by  
18 the underlying settlement agreement and the injunction. In the  
19 Church's February, 1993 motion to compel, the Church asked the  
20 court to order Armstrong to answer questions concerning his work  
21 on the Aznaran case, despite Armstrong's claim of attorney-client  
22 and work product privileges. That motion was granted.

23 Thus, the court has already held, correctly, that the  
24 limited work product privilege cannot apply to these questions.  
25 Pursuant to C.C.P. §2018, the "work product of an attorney is not  
26 discoverable unless the court determines that denial of discovery  
27 will unfairly prejudice the party seeking discovery in preparing  
28 that party's claim or defense or will result in an injustice."

1 Only writings which reflect "an attorney's impressions,  
2 conclusions, opinions or legal research or theories" are  
3 completely protected from discovery.

4 In this case, the questions asked of Armstrong in deposition  
5 do not probe into Mr. Greene's work product at all; they  
6 certainly have nothing to do with his writings. The questions  
7 seek to establish whether or not Armstrong has breached the  
8 agreement and the injunction by aiding the Aznarans and other  
9 anti-Scientology litigants, and whether Armstrong has profited  
10 from those breaches. They do not probe the content of any  
11 writings, nor have they asked for production of work generated by  
12 either Armstrong or Greene on the case. Indeed, the only  
13 questions asked which specifically pertain to matters at issue in  
14 the Aznaran case were questions which sought to ascertain the  
15 degree of Armstrong's participation in the preparation of  
16 materials that were filed in that case, and are thus part of the  
17 public record.

18 Armstrong's privacy objection (which Mr. Greene has  
19 apparently asserted on behalf of both Armstrong and himself) is  
20 just as inapplicable here as it was to the category of questions  
21 concerning conversations with third parties about Scientology.  
22 Greene hired Armstrong knowing that Armstrong had an Agreement  
23 with the Church not to be employed on any anti-Scientology cases.  
24 Neither Greene nor Armstrong could reasonably expect that their  
25 conversations and conduct -- conduct directly at issue in this  
26 case -- would not be probed in discovery. Nor is there any  
27 legitimate reason to shield from plaintiff information as to  
28 Armstrong's compensation for work on anti-Scientology cases, or

1 Mr. Greene's diligence in ensuring that he and his client comply  
2 with the terms of the injunction issued specifically in this  
3 case.

4 C. DEPOSITION QUESTIONS CONCERNING THE ANTI-SCIENTOLOGY  
5 CORPORATION WHICH ARMSTRONG HELPED TO ESTABLISH, FACTI

6 QUESTION NO. 7:

7 Q: In these initials (sic) conversations with Mr.  
8 Wollersheim what was the gist of any discussion about the purpose  
9 of FACT?

10 MR. GREENE: With respect to that I -- I'm going to  
11 interpose a privacy objection and instruct the witness not to  
12 answer.

13 MR. HERTZBERG: What privacy objection?

14 MR. GREENE: Privacy with respect to FACT and also an  
15 associational privacy interest as to Armstrong.

16 MR. HERTZBERG: I'd like you to reconsider in light of the  
17 fact that there are allegations in this complaint that -- let me  
18 finish.

19 MR. GREENE: I haven't interrupted yet.

20 MR. HERTZBERG: -- that there are allegations in this  
21 complaint which relate directly to the purpose of FACT and the  
22 participation of Mr. Armstrong in FACT and the claims of  
23 violations of the settlement agreement, which is the subject of  
24 this action.

25 MR. GREENE: Yes, I'm aware of that, and I understand your  
26 position. And the ultimate resolution would be the consequence  
27 of the balancing of the interests, one against the other.

28 I will allow Mr. Armstrong to respond to questions which are

1 posed in terms of what his understanding was. And I think you  
2 can get what you want that way, but anything that's going to go  
3 into making inquiries about discussions between him and  
4 Wollersheim with respect to the purpose of FACT, etc., I won't  
5 allow him to answer those.

6 [GA Depo. Vol. VII, 920:23-922:2]

7 QUESTION NO. 8:

8 Q: Did you discuss with Mr. Wollersheim whether the  
9 information that would be assembled for the FACT database would  
10 be made available to any specific persons or category of persons?

11 MR. GREENE: Same objection as before, privacy and  
12 associational, first amendment privacy and instruct you not to  
13 answer.

14 [GA Depo. Vol VII, 923:24-924:5]

15 QUESTION NO. 9:

16 Q: You testified earlier that you had a discussion with  
17 Mr. Wollersheim about what you could or could not do in terms of  
18 participating in FACT activities; do you recall that --

19 A: Right.

20 Q: -- testimony? What exactly did you mean by that when  
21 you said "could or could not do" --

22 MR. GREENE: Wait. With respect to that I will instruct  
23 the witness not to answer based on the privacy and first  
24 amendment associational objections I previously made.

25 MR. HERTZBERG: Well, I don't understand that objection at  
26 all, Mr. Greene. First of all, he's already identified who he  
27 spoke to about that, so there's -- disclosure of the identity of  
28 the individual is not an issue here.

1 MR. GREENE: What is at issue is the content, and I simply  
2 won't allow the question.

3 MR. HERTZBERG: It has to do with Mr. Armstrong's state of  
4 mind about the settlement agreement, which is a primary issue in  
5 this case. And I'll narrow it by asking him what he said. He  
6 doesn't have to tell me what Mr. Wollersheim said, because I'm  
7 not interested in what Mr. Wollersheim said.

8 MR. GREENE: I'm simply not going to allow him to go into  
9 the substance of discussions between him and Mr. Wollersheim.

10 MR. HERTZBERG: As far as it includes and apparently  
11 exclusively addresses Mr. Armstrong's interpretation of the  
12 settlement agreement?

13 MR. GREENE: My objection stands.

14 [GA Depo. Vol. VII, 933:4-944:9]

15 REASONS FOR COMPELLING RESPONSES TO CATEGORY C

16 The 18th Cause of Action in the Second Amended Complaint  
17 alleges that Armstrong, with his friend and associate, Larry  
18 Wollersheim, has established a corporation in Colorado to act,  
19 inter alia, as a computer repository for documents concerning  
20 Armstrong's involvement with the Church and related entities.

21 Armstrong has established FACTI to provide a computer  
22 bulletin board service to consumers -- it is overt, public, and  
23 aggressively viciously in its anti-Scientology stance [See, e.g.,  
24 Ex. K.] Armstrong may not establish a corporation for the very  
25 purpose of breaching the Agreement, and then seek to shelter his  
26 conversations with other corporate principals by claiming  
27 privacy. Vinson v. Superior Court, supra, 43 Cal.3d 833. The  
28 Church is not seeking details concerning Armstrong's sexual

1 practices; it is not attempting to obtain his tax returns; it  
2 does not seek to inquire into his mental stability. All of these  
3 questions generate legitimate privacy concerns. But the contents  
4 of a conversation that Armstrong had with Wollersheim concerning  
5 what Armstrong felt he could or could not do for FACTI because of  
6 the Agreement and the injunction is patently relevant, and no  
7 possible expectation of privacy could attach to such a  
8 discussion. Armstrong must be compelled to answer these  
9 questions, along with any relevant follow-up questions.

10 Dated: December 22, 1994

Respectfully submitted,  
MICHAEL LEE HERTZBERG  
Laurie J. Bartilson  
BOWLES & MOXON  
WILSON, RYAN AND CAMPILONGO

15 By:           / S /            
16 Andrew H. / Wilson

17 Attorneys for Plaintiff  
18 CHURCH OF SCIENTOLOGY  
19 INTERNATIONAL

28

PROOF OF SERVICE

STATE OF CALIFORNIA        )  
                                  ) ss.  
COUNTY OF LOS ANGELES    )

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Los Angeles, CA 90028.

On December 22, 1994, I served the foregoing document described as SEPARATE STATEMENT OF QUESTIONS TO BE COMPELLED IN SUPPORT OF PLAINTIFF CHURCH OF SCIENTOLOGY INTERNATIONAL'S MOTION TO COMPEL DEFENDANT GERALD ARMSTRONG TO ANSWER DEPOSITION QUESTIONS, AND FOR SANCTIONS on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

FORD GREENE  
HUB Law Offices  
711 Sir Francis Drake Blvd.  
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MICHAEL WALTON  
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Suite 120  
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[x] BY MAIL

[ ] \*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[x] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that

same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on December 22, 1994 at Los Angeles, California.

[ ] **\*\***(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on \_\_\_\_\_ at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

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Print or Type Name

\_\_\_\_\_  
Signature

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